IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGRH

S.A.O. No.24 of 1988
Date of decision: October 11,2006

Laxmi Devi V. Promila Sharma and another

CORAM: HON'BLE MR. JUSTICE VINEY MITTAL

Present: Shri Vikas Bahal,Advocate, for the appellant.
Shri D.R.Mahajan,Advocate for respondents.

Viney Mittal,J.

The present appeal has been filed by the defendant. The challenge is to the order dated November 28.1997 passed by the District Judge, Ludhiana. Vide the aforesaid order, the District Judge has dismissed the application filed by the defendant under Order 9 Rule 13 of the Code of Civil Procedure (hereinafter referred to as the “Code”) and has refused to set aside the exparte judgment and decree dated August 19, 1987.

The facts leading to the present appeal are that a suit for recovery of Rs.85800/- was filed by Promila Sharma against defendant No.1, Om Parkash, and defendant No.2 Laxmi Devi. The suit filed by the plaintiff was partly decreed by the trial court vide judgment and decree dated March 5,1986. The suit of the plaintiff was decreed for an amount of Rs.50,000/- with interest at the rate of 12% per annum, amounting to Rs.18,000/- i.e. for a total sum of Rs.68,000/- with future interest at the rate of 6% per annum on the principal amount of Rs.50,000/-. The said suit was decreed only against defendant No.1, Om Parkash. The suit was dismissed against defendant No.2, Laxmi Devi. Defendant No.1 did not file any appeal against the said judgment and decree. Since the suit was

dismissed against defendant No.2, obviously no appeal was required to be filed by her. However, the plaintiff chose to file an appeal against the said judgment and decree and claimed that her suit should have been decreed in toto by the trial court.

The appeal filed by the plaintiff was listed before the District Judge for hearing on August 19,1987. At the time of hearing, an application was presented on behalf of the defendant-respondents, informing the court that the counsel for the defendants, who was to come from outside i.e. from Nawanshahr, had suddenly fallen ill. Consequently, a request was made for adjournment of the case. The appellate Court rejected the aforesaid request made on behalf of the defendants. Consequently, the defendants were proceeded exparte. The appeal filed by the plaintiff was allowed on the aforesaid date.

An application under Order 9 Rule 13 of the Code was subsequently filed on behalf of the defendants. They claimed that the judgment and decree passed by the appellate court on August 19,1987 was liable to be set aside on account of the fact that the defendants had remained unrepresented on account of the illness of their counsel, Shri S.L.Jain, who had to come from outside i.e.from Nawanshahr.

The learned District Judge has dismissed the aforesaid application flied by the defendants. It is in these circumstances that the defendants are before this court.

I have heard learned counsel for the parties and have also perused the orders passed by the learned District Judge.

In my considered view, learned District Judge has taken an hypertechnical view of the whole matter. As a matter of fact, there was absolutely no justification for the court not to have adjourned the case, when the same was fixed for arguments on August 19,1987, when an application had been received on behalf of the defendants that their

counsel, Shri S.L.Jain, Advocate, who was to come from Nawanshahr had suddenly fallen ill. In the impugned order, learned District Judge has observed that there was no justification for the aforesaid counsel not to come and, in any case, when the matter was shown in the cause list for cases listed for arguments, then the counsel should have made an arrangement to get the case argued or get the same delisted on a date prior to the date for argument. It is observed by the appellate court that the counsel should have sent his own clerk rather then the defendant engaging another counsel for making a request for adjournment. However, I find that all the observations have been made by the District Judge out of an anger against the defendants rather than a mere refusal to exercise judicial discretion. The entire order of the District Judge conveys his anger. In my considered view, the view taken by the District Judge is not only harsh but also unrealistic. The suit had been decided by the trial court vide its judgment and decree dated March 5,1986. The appeal had not become old. The defendants had nothing to gain by remaining unrepresented. No previous conduct of the defendants or their counsel showing that they had ever delayed the proceedings had been noticed by the District Judge. As a matter of fact, the present appeal has remained pending in this court for a period of more than 18 years. The course adopted by the learned District Judge cannot be said to have advanced the cause of justice, in any manner.

Consequently the present appeal is allowed. The order dated November 28,1987 passed by the learned District Judge, Ludhiana is set aside. As a result thereof, the exparte judgment and decree dated August 19,1987 is also set aside. The appeal filed by the plaintiff is restored to its original number subject to Rs.5000/- as costs. The cost would be paid by the defendants to the plaintiff within one month of the appearance of the parties, failing which the present appeal shall be deemed to have been

dismissed.

The learned District Judge, Ludhiana shall now either keep the appeal with himself or may allocate the same to a Court of competent jurisdiction.

October ,2006 (Viney Mittal)
sks Judge

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